IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3392 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINKUMAR V SONI

Versus

FARMER'S FRIENDS ASSOCAITION

Appearance:

1. Special Civil Application No. 3392 of 1998

MS ROOPAL R PATEL for Petitioner No. 1

MR MIHIR H JOSHI for Respondent No. 1

MS HEMANI S BHATT for Respondent No. 1

MR RM CHHAYA for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 21/03/2002

ORAL JUDGEMENT

This petition styled as a petition under Article

226 and 227 of the Constitution of India, in reality challenges the order of the Labour Court, Kalol in Recovery Application No. 145 of 1985, whereby mainly the claim of over-time wages and wages for casual and other leaves was rejected on the ground of absence of supporting evidence.

2. It appears from the record, particularly the discussion in the impugned award and the application Ex.14 filed before the Labourt Court that the petitioner had to rely upon his oral evidence in support of his claim in the absence of any documentary evidence being produced by the respondent. In reply to the specific query as to whether at any stage of the proceedings the petitioner had established even the existence of the documents demanded by him or whether he had obtained any order for production of such documents, the reply was in the negative. Therefore, in short the Labour Court had no alternative but to examine and appreciate the oral evidence of the petitioner in support of his claim. Doing that exercise the Labour Court has arrived at the finding of fact that the petitioner had failed to prove the necessary facts for sustaining the claim for overtime wages and wages for casual and other leaves. The petitioner was also found to have filed the Recovery Application with an ulterior motive for bringing pressure on the respondent in view of the other legal proceedings pending at that time.

3. On the other hand, though the impugned order was passed on 26.5.93, the petition is filed in the month of April, 1998 with the spacious explanation for the delay being that the petitioner was not receiving information about the order and he being a poor person, did not know about the legal services rendered by the Legal Aid Committee. This explanation of delay hardly inspires confidence in view of the admitted fact on record that the petitioner was agitating another case before this Court in the years 1993 to 1995 and that matter was even carried further.

4. In the above facts and circumstances, no reason is made out to interfere with the finding of fact recorded by the Labour Court and the petition is also liable to be dismissed on account of delay and latches. The judgement cited by the learned Counsel for the petitioner, viz. the judgement of the Karnataka High Court in the case of Management of State Bank of India Vs. V.M. Mahapurush - 1995 (1) LLJ p.644 and the judgement of the apex Court in H.D. Singh Vs. Reserve Bank of India - 1985 (4) SCC p.205 do not apply in the

facts of the present case since even the existence of documents on the basis of which adverse inference could have been drawn was not established before the Labour Court in the facts of the present case. The petition is therefore, dismissed. Rule is discharged with no order as to costs.

(D.H. Waghela, J.)

*/Mohandas